other evidence (*Director of Public Prosecution* v. *Kilbourne*[3]). Reference may be made to the following passage in paragraph 454 of Volume 11 of *Halsbury's* Laws of England (4th edn.) which I would respectfully adopt:-

"The corroboration need not consist of direct evidence that the defendant committed the offence, nor need it amount to confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respects material to the charge under consideration. It is sufficient if it is circumstantial evidence of the defendant's connection with the offence; but it must be independent evidence, and must not be vague."

In this case there was not only the oral testimony of the complainant of her association with the accused from January 1981 until June that year including her visits to the accused's home but there were also several letters written by the complainant to the accused (exhibits D7, P13A to E) which were received by the police investigation officer (P.W.5) from the accused's mother and were produced in court as evidence by the prosecution without any objections by the defence and show that the accused had a close and intimate relationship with the complainant during that year. Therefore there was not only medical evidence to corroborate the complainant's evidence of the factum of carnal knowledge but also documentary evidence to support her identification of the accused. To use the words of Thomson L.P. again in *Din's* case,[2] "it is a case of which story is to be preferred and it seems to follow from this that corroboration of any part of the prosecutrix's story is 'pro tanto' of some value."

As the accused has not been able to satisfy me that there are grounds for interfering with his conviction by the lower court, I therefore dismissed his appeal against conviction. As regards the accused's appeal against sentence, I considered that the complainant was a consenting party, although her consent was immaterial (See *R.* v. *Beale*[4]). Nevertheless the accused was a first offender and in all the circumstances of the case I considered that justice would be served if I reduced the sentence to nine months. The Public Prosecutor's appeal against sentence was therefore dismissed.

Order accordingly.

Solicitors: *Bala Mahesan & Co.*

SIEW KUEN WILLIAMS v. YONG SIEW IN

[O.C.J. (Siti Norma Yaakob J.) August 16, 1983]
[Kuala Lumpur – Civil Suit No. 373 of 1975]

Practice & Procedure – Costs – Solicitor and Client bill – Taxation – Can an advocate present an itemised bill in excess of the amount stated in the gross sum bill? – Legal Profession Act 1967, ss. 121(1)(a) & 132.

The issues before the court were: (1) can the advocate present an itemised bill in excess of the amount stated in the gross sum bill? (2) whether there should be an Order of Court before the itemised bill can be taxed by the Registrar.

Held: (1) the answer must be in the affirmative as by acceding to a client's request to submit an itemised bill in place of the gross sum bill, "the gross sum bill shall thereupon be of no effect". The client who, not being satisfied with the gross sum charged, demands a detailed bill of charges must put up with the consequences, if the amount of the detailed bill turns out to be larger than the gross sum first charged;

(2) in the case of the solicitor and client bill, the obligation to pay becomes due the moment the client engages the services of an advocate. There is therefore no necessity for any Order of Court to precede the taxation of such a bill.

Case referred to:

(1) *In Re Taxation of Costs, In re Solicitors* [1943] K.B. 69.

CIVIL SUIT.

Dato' Kok Wee Kiat for taxing advocates.
Datin Saraswathy Devi for party chargeable.

Cur. Adv. Vult.

Siti Norma Yaakob J.: The present proceedings before me relate to an application under O.56 r.2(2) of the Rules of the High Court 1980 by a taxing advocate to adjourn into open Court further arguments on the Notice of Appeal filed against the decision of the Registrar dated May 5, 1983. The Registrar had, on May 4, 1983 ruled against the objection raised by the party chargeable on a bill of costs, (the defendant in the suit) by holding that she had the jurisdiction to tax the itemised solicitor and client bill dated March 17, 1983 which was then before her for taxation. Being dissatisfied with this decision, the party chargeable filed a Notice of Appeal dated May 5, 1983 and after hearing arguments in chambers, I had allowed the appeal and ordered that the only bill the Registrar can tax is the gross sum bill dated August 11, 1982 which had been earlier presented by the taxing advocate to the party chargeable. Being dissatisfied with this order, the taxing advocate

had applied to adjourn the Notice of Appeal into open Court for further arguments.

A brief background into this case shows that the party chargeable had retained the taxing advocates to act on her behalf in this enticement suit. The action however never went on trial as the plaintiff applied for and was granted leave to discontinue the action. The action was subsequently dismissed and the Court also ordered party and party costs which has since been taxed. Subsequently, the taxing advocates presented a gross sum bill dated August 11, 1982 to the party chargeable wherein a sum of $20,275/- was charged as the getting up fee and another sum of $316.20cts. by way of disbursement making a total of $20,591.20cts. Being dissatisfied with the getting up fee, the party chargeable had in a letter dated October 6, 1982 requested for an itemised bill to be taxed by the Registrar. Pursuant to this request, the taxing advocates submitted an itemised bill of costs dated March 17, 1983 wherein the getting up fee alone is charged at $50,000/-, thereby, inflating the total costs due to $55,423/-. The issue before me then was which bill is to be taxed by the Registrar. Is it the gross sum bill for $20,521.20cts. dated August 11, 1982 or the itemised bill of costs for $55,423/- dated March 17, 1983.

The main objection raised by the party chargeable before me were (1) that the application under O.56 r.2(2) has been made out of time, (2) since she only consented to the gross sum bill to be itemised and taxed, the Registrar can only tax an itemised bill which shall not exceed the amount charged under the gross sum bill.

Under O.56 r.2(2), all applications for further arguments into open Court must be made within 4 days of the order made by the Judge in Chambers. In computing any period of time less than 7 days, O.3 r.2(5) excludes weekly holiday or public holiday. My Order in Chambers was made on May 20, 1983, a Friday. The taxing advocates' application under O.56 r.2(2) is dated May 25, 1983. Discounting the intervening Sunday, this application therefore falls within the 4-day limit fixed by O.56 r.2(2) and is therefore not time-barred.

Coming to the more substantial objection, Counsel for the taxing advocates has urged me to lay down guidelines as to how counsel should conduct themselves when presenting bills of costs to their clients as he maintains that there are apparent inconsistencies in sections 121(1) and 132 of the Legal Profession Act 1967 (the Act) relating to remunerations of advocates and solicitors in contentious matters. Reading these two sections, I find no apparent inconsistency but that they complement each other. Under section 121(1), in the absence of any express agreement as to costs, an advocate has the option of either presenting a gross sum bill to his client or an itemised bill. If a gross sum bill has been presented, the client may, within 3 months of such presentation, require the advocate to deliver instead a bill with detailed items. When such a request has been made, the advocate must draw out an itemised bill in the manner provided for by the Rules of the High Court; as is required by section 132 of the Act. Going one step further, can the advocate then present an itemised bill in excess of the amount stated in the gross sum bill? The answer must be in the affirmative as by acceding to a client's request to submit an itemised bill in place of the gross sum bill, "the gross sum bill shall thereupon be of no effect". The effect of these quoted words under section 121(1)(a) of the Act has been tested in the English case *In Re Taxation Of Costs, In re Solicitors*[1] where the facts are identical. In that case, the client had demanded a detailed bill from her solicitor after the latter had delivered a gross sum bill. On taxation of the detailed bill, the total sum amounted to more than the original gross sum charged by the solicitor. On appeal, the Court of Appeal held that where a client exercises her rights, "she must bear the burden imposed on her by the order by paying that amount of the detailed bill which is found on taxation to be correct without taking into account the amount of the gross sum first asked for by the solicitor". Goddard L.J. went further by stating "if a solicitor delivers a gross sum bill and his client asks for a detailed bill, the solicitor must withdraw his gross sum bill and is treated as if it has never been delivered. The detailed bill becomes the material bill and is subject to taxation. The resulting position seems to me to be just and reasonable. The client who, not being satisfied with the gross sum charged, demands a detailed bill of charges must put up with the consequences, if the amount of the detailed bill turns out to be larger than the gross sum first charged. The client should therefore remember the advice given long ago, which is especially true to-day: 'Agree with thine adversary quickly, whiles thou art in the way with him'."

Following the decision of this case, I therefore vary the order I made in chambers on May 20,

1983 by dismissing the appeal and order that the Registrar proceed to tax the itemised bill of costs dated March 17, 1983 that has been filed in court. Needless to say, it is up to the Registrar to decide on arguments presented before her the amount to be allowed for the getting up.

One last point I wish to clear is that references were made before me that there should be an order of Court before the itemised bill can be taxed by the Registrar. It must be remembered that what is in issue in the quantum of a solicitor and client bill of costs not a party and party bill where a Court order is necessary to determine who should be liable to pay for the costs of the proceedings before such a bill can be presented for taxation. In the case of the solicitor and client bill, the obligation to pay becomes due the moment the client engages the services of an advocate. There is therefore no necessity for any Order of Court to precede the taxation of such a bill.

Order accordingly.

Solicitors: *Mah-Kok & Din; Saraswathy Devi.*

DATUK HARRIS BIN MOHAMED SALLEH v. ABDUL JALIL BIN AHMAD & ANOR.

[O.C.J. (Siti Norma Yaakob J.) August 25, 1983]
[Kuala Lumpur – Civil Suit No. P156 of 1981]

Libel – Publication of libellous articles on Chief Minister – Assessment of damages – Factors to be considered.

Tort – Libel – Libellous publication of book on Chief Minister – Quantum of damages – Factors to be considered.

This action arose from the publication of libellous articles appearing in a book titled "Tumbangnya Harris Salleh" (the Downfall of Harris Salleh). The plaintiff is the Chief Minister, President of the Berjaya Party and leader of the Barisan National in the State of Sabah. The first defendant is the author and publisher of the book whilst the second is its printer.

The defamatory articles complained of relate to the plaintiff's conduct in acquiring the site of the building of Berjaya Headquarters by exchanging prime timber land to the owner of the site. By this exchange, the plaintiff was alleged to have acquired 50% share of the building whilst the other 50% was held by another member of his family. He was also alleged to have received gifts amounting to $3.4 million on his 50th birthday and at the party celebrating his birthday, his wife was presented with a necklace worth $1.5 million. The last article relates to the plaintiff's unislamic attitude of choosing a Friday, the Muslim holy day, to declare open a Chinese temple, an action quite unbefitting of a Muslim leader.

The writ of summons was issued on April 16, 1981. The first defendant failed to enter appearance and judgment in default was entered against him on December 4, 1981. The second defendant on the other hand, filed a statement of defence on October 15, 1981, but this statement of defence was struck out on April 2, 1982 and interlocutory judgment entered against him.

In assessing the damages the learned Judge considered the following factors: (1) the conduct of the plaintiff (2) his position and standing (3) the nature of the libel (4) the mode and extent of publication (5) the absence or refusal of any retraction or apology and (6) the whole conduct of the defendant from the time the libel was published down to the very moment of the verdict.

Held: the defendant's motive in publishing the libel just before the general elections could only be motivated by malice, and the libels were perpetrated for political and financial gains. The defendants had taken advantage of the situation by depicting the plaintiff in the worse possible light. They acted deliberately and recklessly not caring for the true nor the distress it caused and the harm that would be inflicted on the personal and political reputation of the plaintiff. Taking all the factors into consideration, the plaintiff should therefore be awarded a sum of $100,000.00 as compensatory damages together with costs.

Cases referred to:

(1) *Broome* v. *Cassell & Co. Ltd.* [1972] A.C. 1027.
(2) *Datuk Patinggi Abdul Rahman Ya'kub* v. *Abang Mohammad bin Abang Anding* [1979] 2 M.L.J. 185.
(3) *J.B. Jeyaretnam* v. *Lee Kuan Yew* [1979] 2 M.L.J. 282; [1982] 1 M.L.J. 239, P.C.
(4) *Morgan* v. *Oldhams Press Ltd. & Anor.* [1971] 1 W.L.R. 1239.

CIVIL SUIT.

C. Abraham for the plaintiff.
First defendant absent.
H.Y. Lee for the second defendant.

Cur. Adv. Vult.

Siti Norma Yaakob J.: This action arose from the publication of libellous articles appearing in a book titled "Tumbangnya Harris Salleh". The plaintiff is the Chief Minister, President of the Berjaya Party and leader of the Barisan National in the State of Sabah. The first defendant is the author and publisher of the book whilst the second defendant is its printer.

The writ of summons was issued on April 6, 1981. The first defendant failed to enter appearan-